

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

UNITED STATES

) No. 8-04

)

v.

)

BRIAN EUGENE SMITH

MEMORANDUM ORDER

On November 4, 2013, Defendant filed a Motion to Vacate his conviction and sentence pursuant to 28 U.S.C. § 2255, along with a supporting brief. Defendant then filed a Motion for Production of Discovery on January 31, 2014. On April 28, 2014, Defendant filed a Motion to stay the Section 2255 proceeding, pending the outcome of certain FOIA requests. I granted that Motion, and stayed the proceeding. Subsequently, on December 19, 2014, Defendant filed a Motion to Unseal Application for Electronic Surveillance. The Court then directed Defendant to apprise the Court of the status of his FOIA requests, and whether he sought to alter the stay entered in this matter. In response, Defendant advised the Court that his FOIA requests remain pending, but that he wishes the stay lifted for the purpose of ruling on his Motion to Unseal. Because his Motion for Production is not impacted by the FOIA requests, which provided the sole grounds for the stay, I will rule on that Motion as well. The stay, however, shall remain in effect for Defendant's Section 2255 proceeding.

In his Motion to Unseal, Defendant seeks information relating to the authorization for electronic surveillance via a "pole camera" at a particular location. The Government asserts, in summary, that the requested information is non-existent. Accordingly, Defendant's Motion to Unseal [244] will be denied.

In his Motion for Production, Defendant seeks various types of information, including information relating to the “pole camera” and telephone records. To obtain discovery under these circumstances, Defendant must show good cause for the information, "by setting forth specific allegations which, if fully developed, would entitle him or her to the writ."

United States v. Scalise, 2012 U.S. Dist. LEXIS 86188 (W.D. Pa. June 21, 2012) (quoting Lee v. Glunt, 667 F.3d 397, 404 (3d Cir. 2012)). Defendant has not set forth specific allegations, or otherwise demonstrated good cause, in support of his requests for any of the information identified in his Motion. Moreover, the Government asserts that much of the requested information has already been provided to Defendant. Therefore, I will deny his Motion for Production [237].

AND NOW, this 5th day of March, 2015, IT IS SO ORDERED.

BY THE COURT:

/s/Donetta W. Ambrose

Donetta W. Ambrose

Senior Judge, U.S. District Court